IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

MACA.No. 713 OF 2004()

OPMV.900/1994 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KOZHIKODE

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APPELLANT/RESPONDENT:

V.P. THRIMATHY, MANAGING PARTNER,
M/S. THRIMATHY CONSTRUCTION COMPANY,
EDAVANNA, MALAPPURAM DISTRICT.

BY ADV. SMT.M.A.VAHEEDA BABU
SRI.M.A.ABDUL HAKHIM

RESPONDENTS: CLAIMANT:

K.P. SASIDHARAN, S/O. KANARAN,
AGED 30 YEARS, RESIDING AT CHARUNNI VAYALIL HOUSE,
VENGERI P.O., VENGERI AMSOM, DESOM, KOZHIKODE.

BY ADVS M/S..VINOD VALLIKAPPAN &
GANGADHARAN M.P.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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M.A.C.A. NO. 713 OF 2004

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DATED THIS, THE 7TH DAY OF FEBRUARY, 2007

J U D G M E N T

This appeal is directed against the award passed by the Motor Accidents Claims Tribunal, Kozhikode, in O.P. (MV) 900/2004, on 27th October, 1994.

2. The respondent in the court below is the appellant herein. The respondent herein filed the above petition claiming compensation alleging that the accident occurred due to the rash and negligent driving of the bulldozer. The claimant was working as a driver in a lorry and while standing in front of the lorry to pick up the hook in front of the lorry, the bulldozer belonging to the respondent came in a rash and negligent manner and hit on the petitioner as a result of which he sustained injuries. The appellant herein denied the alleged negligence on the part of the bulldozer. and further contended that the accident occurred due to the sheer negligence of the claimant himself.

3. Exts.A1 to A4 were marked on the side of the claimant and Exts. B1 to B4 were marked on the side of the Respondent. Court exhibit Ext.C1

was also marked. The oral evidence of PWs 1 and 2 and RW.1 also form part of the evidence in this case.

4. Though a FIR was registered against the driver of the bulldozer, he was eventually acquitted. Therefore, the question is as to whether there is any material evidence to prove the negligence on the part of the driver of the bulldozer. The court below held that the conviction in a criminal case will have to prove beyond reasonable doubt and therefore, the acquittal be only a technical one. But it did not proceed to discuss the evidence and straight away came to the conclusion that the evidence of PW1 and Ext.A1 and the other attendant circumstances show that the accident occurred due to the rash and negligent driving of the driver of the bulldozer. The said finding is seriously challenged in this appeal.

5. The fact remains that the lorry was engaged in the work relating to leveling of ground by bringing and unloading soil for the construction of a market. The front wheel of the lorry got stuck up in the mud as a result of which the bulldozer was brought to lift and pull the lorry out. The rope tied on the front bumper of the lorry to the rear side of the bulldozer broke down and the lorry went towards back. Seeing the lorry coming uncontrolled, the driver of the lorry tried to jump in to its driving seat as a result of which he fell on a heap of laterate stones and sustained injuries.

Actually, the bulldozer was engaged to pull out the lorry and it was on the request of the lorry driver that the bulldozer came there. In such circumstances, in the absence of any better evidence, no negligence could have been attributed on the part of the driver of the bulldozer. Confronted with the situation, the parties were asked as to whether the matter could be amicably settled between them. It is submitted by the counsel on both sides that an amount of Rs. 12,000/- was already received by the respondent/claimant and an amount of Rs. 12,500/- is already deposited. If no further liability is fastened on the appellant herein the matter can be settled, to which course the respondent also agreed.

In the above circumstances, there will be a direction that the amount of Rs.12,500/- already deposited at the time of admission of this appeal is allowed to be withdrawn by the respondent herein. No further amount due and payable by the appellant towards compensation as already awarded. On such terms, the matter will stand closed as compromised between the parties.

P.R. RAMAN,
JUDGE.

knc/-